

RECEIPT # _____
AMOUNT \$ 250.00
SUMMONS ISSUED Y
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. CMG
DATE 6-27-05

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION

NO:

05 - 11347 RGS

DAVID S. BOLIVER
Plaintiff

v.

COMPLAINT

CHASE MANHATTAN BANK
Defendant

MAGISTRATE JUDGE Boulter

COMPLAINT

Now comes the Plaintiff in the above-captioned action, David Boliver, and respectfully states his complaint against the Defendant, CHASE MATTAN BANK, as follows:

1. This is an action for actual damages, statutory damages, injunctive relief, and attorney's fees for violation of the Truth and Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z issued thereunder.

JURISDICTION

2. Jurisdiction over this action is conferred on this Court by 15U.S.C. § 1640(e) and 28 U.S.C. §§ 1331, 1337(a), and 1367.

PARTIES

3. The Plaintiff is a natural person residing at 49 Pearl Street # 51 Everett, Massachusetts 02149.
4. The Defendant is a national bank chartered under the laws of the United States, and a business entity, with offices located at P.O. Box 15902 Wilmington, DE 19850 and doing business under the name CHASE MANHATTAN BANK.

INTRODUCTORY

5. On or about June 2004, the plaintiff entered into an open-ended credit transaction, namely the opening of a CHASE MANHATTAN BANK charge account, number 5149227389000258, with Defendant.
6. The above-referenced account was used primarily or exclusively for personal, family and/or household purposes.
7. The Defendant submitted periodic statements reflecting extension of credit, and costs and fees.
8. On or about January 22, 2005 the Plaintiff submitted to the Defendant a notice of billing error, pursuant to and in compliance with 12 C.F.R. § 226.13 and 15 U.S.C. § 1666.
9. The Plaintiff sent the Defendant additional billing notices each time the Defendant sent a statement with errors. This typically occurred every month. On or about

February 18, 2005, after receiving an inadequate response from the Defendant, the Plaintiff notified the Defendant the billing error(s) specified in the initial billing Error notice was still in dispute.

FIRST CLAIM RELIEF-FAIR CREDIT BILING ACT FCBA VIOLATIONS

10. The Defendant violated 15 U.S.C. § 1666, on at least one occasion, by failing to respond to Plaintiff's billing error notice, in a manner consistent with the statutory guidelines.
11. The Defendant violated 15 U.S.C. § 1666, on at least one occasion, by failing to comply within the statutory timelines.
12. The Defendant violated U.S.C. § 1666, on at least one occasion by failing to refrain from actions prohibiting by statute, prior to complying with the FCBA.
13. The Defendant violated 15 U.S.C. § 1666(a), on at least one occasion, by failing to refrain from actions prohibited by the statute, prior to complying with the FCBA.
14. The Defendant violated 15 U.S.C. § 1666a (b), on at least one occasion by failing to report the account as "In Dispute" and at the same time notifying plaintiff of the name and address of each third party to which such report was made, after receiving additional correspondence from plaintiff in response to defendant's inadequate response to the initial billing error notice.

WHEREFORE, the Plaintiff respectfully demands judgment, pursuant to 12 C.F.R. §

226 13, 15 U.S.C. § 1640(a), 15 U.S.C. § 169(k), and 15 U.S.C. § 1666(e), against the Plaintiff, as follows:

- a. reducing pursuant to U.S.C. § 1666(e), Plaintiff's debt to Defendant, its successors and assigns in regards to the subject account, if any such debt exists, by the statutory forfeiture of \$50;
- b. as twice the financing charges in this case exceeds the statutory cap, an award to Plaintiff of the maximum statutory damages of \$1000.00 available pursuant to 15 U.S.C. § 1640(a)(2) (A), for violation of 15 U.S.C. §§ 1666 and 1666a;
- c. an award to the Plaintiff of the cost of the action, together with a reasonable attorney's fee as determined by the court, pursuant to 15 U.S.C. § 1640(a)(3); and
- d. enjoining the Defendant:
 - (i) to identify to Plaintiff all credit reporting agencies, persons, and entities which it has notified of Plaintiff's alleged delinquency in regard to the account;
 - (ii) to notify all such agencies, person, and entities that Plaintiff was not and is not presently delinquent in regard to the account;
 - (iii) to refrain forever from notifying any agency, person, or entity that Plaintiff is delinquent in regard to the account until the same shall have been determined by a court of competent jurisdiction;
- (e) and such other and further relief as the Court may find to be just and proper.

DEMAND FOR TRIAL BY JURY

The Plaintiff, David S. Boliver, demands trial by jury on all issues so triable.

Respectfully Submitted
David S. Boliver
By his attorney

Njoroge Kamau
BBO# 659849
54 Harley Drive, Suite 11
Worcester, MA 01606
Tel. 508-767-3900
Fax. 508-767-3990

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) DAVID S. BOLIVER

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☐7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME NICHOLAS KAMAUADDRESS 54 HARLEY DR # 11 WORCESTER MA 01606TELEPHONE NO. 508-767-3900 or 774-535-1369

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DAVID S. BOLIVER

(b) County of Residence of First Listed Plaintiff MIDDLESEX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

NJOROGE LAMAU 508-767-3700
54 HARLEY DRIVE 774-535-1369
WILMISTEE, MA 01601

DEFENDANTS

CHASE MANHATTAN BANK

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input checked="" type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Truth in Lending
Brief description of cause: violation of truth in Lending Statute

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____